

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10049 OF 1993

WITH

SPECIAL CIVIL APPLICATION NO. 10846 OF 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GORDHANBHAI MULJIBHAI PATEL LEGAL HEIRS OF M.A.PATEL

Versus

UVARSAID AYURVEDIC DISPENSARY

Appearance:

1. Special Civil Application No. 10049 of 1993
MR P.K.SHUKLA for Petitioner No. 1-5
MR N.D.GOHIL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 27/08/2003

COMMON ORAL JUDGEMENT

Heard learned advocate Mr. P.K.Shukla on behalf of the workman and learned AGP Mr. N.D.Gohil appearing on behalf of the respondent employer.

2. In both the petitions, the respective petitioners have challenged the order passed by the Labour Court in Recovery Application No. 1020 of 1981 dated 5.12.1992 wherein the Labour Court has directed to the employer to pay the amount of 90 days Earned Leave and 208 weekly off to the workman and cost of Rs. 100.00 has been awarded by the Labour Court.

3. Learned advocate Mr. P.K.Shukla has submitted that Labour Court has committed gross error in not considering the overtime work which has been taken by the employer from the workman. Workman is entitled the benefit of overtime and all backwages declared by the State Government. He also submitted that the regular wages from the period from 20.5.1966 to 1.4.1968 and from 1.4.1968 to 4.1.1980 have not been paid by the employer in running grade and therefore, Labour Court has committed gross error in not allowing the entire claim made by the workman before the Labour Court.

4. Learned AGP Mr. N.D.Gohil has submitted that Labour Court has wrongly granted the amount of weekly holidays as well as Earned Leave. According to him, workman is not entitled the said benefit. He also submitted that the workman was appointed on monthly salary of Rs.10.00 being a part-time employee and his salary has been revised subsequently by the employer w.e.f. September, 1975 to 1979. After calculating the said amount, for which, according to the working hours of the workman, the employer has prepared a statement for which workman is entitled Rs. 13,252.50 paise after deducting whatever amount of monthly salary Rs.10.00. For the respective months the respondent has sanctioned the amount of Rs.12,732.50 paise for making necessary payments to the workman by order dated 27.3.1980. But Labour Court has committed error in granting the benefit of weekly off and Earned Leave for which workman is not entitled.

5. I have considered the submissions made by both the learned advocates and considering the fact that the workman had filed application before the Labour Court on the ground that he was appointed on 20.5.1966 and, w.e.f.

1.12.1976 he was made permanent and receiving Rs. 10.00 monthly salary being part-time but he was working 8 hours. Therefore, for regular salary, from 1966 to 1980, the recovery application was filed.

6. Reply was filed by the employer and recovery application has been objected by the employer by filing written submissions before the Labour Court and disputing that the workman had worked full time and workman is not entitled regular salary from the employer. However, the employer has come out with a case that after calculating his salary as per the working hours from 1975 to 1979, after deducting salary of Rs.10.00, for the said period, the employer has paid Rs. 12,232,50 paise to the workman which was accepted by the workman. Therefore, whatever the payment made is based on Government Resolution. Ultimately, the labour Court has examined the matter on the basis of oral and documentary evidence and come to the conclusion while considering the Government Resolution that Labour Court cannot examine the question whether the workman was a full time worker or a part time worker which require adjudication under the provisions of Industrial Disputes Act, 1947. Therefore, Labour Court has considered the Government Resolution dated 1.12.1976. According to the Labour Court, workman is entitled the full salary w.e.f. 1.12.1976 and accordingly vide Exhibit-38, the difference of salary was paid to the workman, which is, according to the Government Resolution. Therefore, workman was not entitled any further amount. However, Labour Court has considered that once the workman was made permanent on the basis of the Government Resolution dated 1.12.1976, from that date onward workman is entitled the Earned Leave for the period 1977, 1978, and 1979 and also entitled the weekly off according to the provisions of law. Therefore, Labour Court has come to the conclusion that in all these three years, workman is entitled 90 days Earned Leave and 208 weekly off for a period of four years from 1976 to 1979.

7. I have perused the entire order passed by the Labour Court and also considered the observations made by the Labour Court and the reasoning given by the Labour Court. According to my opinion, Labour Court has rightly relied upon the Government Resolution dated 1.12.1976 and come to the conclusion that workman is entitled at least Earned Leave for a period of three years and weekly off for a period of four years. For that Labour court has not committed any error which require any interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance

in the present petitions, present petitions are
therefore, dismissed accordingly. Rule is discharged.
Interim relief, if any, stand vacated.

(H.K.Rathod, J)
Jayanti*